

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

CHAPTER 12

WATER RIGHTS BUREAU

Subchapter 1

Montana Water Use Act

Rule	36.12.101	Definitions
	36.12.102	Forms
	36.12.103	Form and Special Fees
	36.12.104	Issuance of Interim Permits
	36.12.105	Temporary Emergency Appropriations
	36.12.106	Testing and Monitoring
	36.12.107	Filing Fee Refunds
	36.12.108	Public Notice Costs
	36.12.109	A Present Value Formula for Determining a Severance Fee in a Petition to Exclude a Tract from Future Services, Assessments, and Liabilities of an Irrigation District
	36.12.110	Legal Land Description Standards
	36.12.111	Map Standards
	36.12.112	Period of Diversion and Period of Use Standards
	36.12.113	Reservoir Standards
	36.12.114	Source Name Standards
	36.12.115	Water Use Standards
	36.12.116	Evaporation Standards

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

Rule	36.12.117	Objection to Application
		Rules 36.12.118 and 36.12.119 reserved
	36.12.120	Basin Closure Area Exceptions and Compliance
	36.12.121	Aquifer Testing Requirements
	36.12.122	Contacts

Subchapter 2

Procedural Rules for Water Right Contested Case Hearings

Rule	36.12.201	Scope and Purpose
	36.12.202	Definitions
	36.12.203	Hearing Examiners
	36.12.204	Commencement of a Contested Case
	36.12.205	Defective Notice of Application
	36.12.206	Representation
	36.12.207	Informal Disposition
	36.12.208	Default
	36.12.209	Time
	36.12.210	Consolidation
	36.12.211	Disqualification of Hearing Examiner
	36.12.212	Prehearing Conference
	36.12.213	Motions to Hearing Examiner
	36.12.214	Motions to Director

## WATER RIGHTS BUREAU

Rule	36.12.215	Discovery
	36.12.216	Depositions to Preserve Testimony
	36.12.217	Subpoenas
	36.12.218	Rights of Parties
	36.12.219	Untimely Objectors
	36.12.220	Witnesses
	36.12.221	Rules of Evidence
	36.12.222	Continuances
	36.12.223	Hearing Procedure
	36.12.224	Disruption of Hearing
	36.12.225	Site Visit
	36.12.226	The Record
	36.12.227	Verbatim Record
	36.12.228	The Decision
	36.12.229	Exceptions to the Hearing Examiner's Proposal for Decision and the Final Decision-Making Process
	36.12.230	Ex Parte Communications
	36.12.231	Rehearing
	36.12.232	Emergency Procedures
	36.12.233	Severability
	36.12.234	Reopening Record

Subchapters 3 and 4 reserved

# WATER RIGHTS BUREAU

## Subchapter 5

### Extensions of Time for Permit and Change Authorizations

Rule	36.12.501	Definitions
	36.12.502	Filing and Application for Extension of Time
	36.12.503	Action on the Application

Subchapters 6 and 7 reserved

## Subchapter 8

### New Appropriation Verification Procedures

Rule	36.12.801	Purpose of Rules and Summary of New Appropriation Verification Process (REPEALED)
	36.12.802	Definitions (REPEALED)
	36.12.803	Notice of Field Investigation (REPEALED)
	36.12.804	Investigation and Documentation (REPEALED)
	36.12.805	Recommendations (REPEALED)
	36.12.806	Informal Conference (REPEALED)
	36.12.807	Reasons for Modification (REPEALED)
	36.12.808	Reasons for Revocation (REPEALED)
	36.12.809	Administrative Hearing and Final Action (REPEALED)

Subchapter 9 reserved

# WATER RIGHTS BUREAU

## Subchapter 10

### Petitions for Rule Closure in Highly Appropriated Basins

Rules 36.12.1001 through 36.12.1009 reserved

Rule	36.12.1010	Definitions
	36.12.1011	Grant Creek Basin Closure
	36.12.1012	Definitions (REPEALED)
	36.12.1013	Rock Creek Basin Closure
	36.12.1014	Walker Creek Basin Closure
	36.12.1015	Towhead Gulch Basin Closure
	36.12.1016	Musselshell River Closure
	36.12.1017	Sharrott Creek Basin Closure
	36.12.1018	Willow Creek Basin Closure
	36.12.1019	Truman Creek Basin Closure
	36.12.1020	Sixmile Creek Basin Closure
	36.12.1021	Houle Creek Basin Closure

## Subchapter 11

### Late Claims

Rule	36.12.1101	Payment Date for Filing of Late Claims
------	------------	--

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

Subchapter 12

Yellowstone Controlled Ground Water Area

Rule	36.12.1201	Purpose and Scope
	36.12.1202	Definitions
	36.12.1203	Application Types
	36.12.1204	Application Filing Requirements
	36.12.1205	Processing - Notice
	36.12.1206	Well Log Report and Supplement
	36.12.1207	Objections
	36.12.1208	Hearings
	36.12.1209	Permit Conditions
	36.12.1210	Filing of Project Completion Notice
	36.12.1211	Meters
	36.12.1212	Replacement Wells

Subchapter 13

Form Acceptance

Rule	36.12.1301	Permit and Change Application Acceptance
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Subchapter 14

Form Modifications

Rule	36.12.1401	Permit and Change Application Modification
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## WATER RIGHTS BUREAU

### Subchapter 15

#### Deficiency Letters and Termination

Rule 36.12.1501 Permit and Change Application Deficiency Letter and Termination

### Subchapter 16

#### Correct and Complete Determination

Rule 36.12.1601 Water Right Permit and Change – Correct and Complete Determination

### Subchapter 17

#### Permit Application Requirements

Rule 36.12.1701 Filing a Permit Application

36.12.1702 Permit Application Criteria – Physical Surface Water Availability

36.12.1703 Permit Application Criteria – Physical Ground Water Availability

36.12.1704 Permit Application – Existing Legal Demands

36.12.1705 Permit Application Criteria – Comparison of Physical Water Availability and Existing Legal Demands

36.12.1706 Permit Application Criteria – Adverse Effect

36.12.1707 Permit Application Criteria – Adequate Diversion Means and Operation

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

Subchapter 18

Permit and Change Applications

Rule	36.12.1801	Permit and Change Applications – Beneficial Use
	36.12.1802	Permit and Change Applications – Possessory Interest

Subchapter 19

Change Applications

Rule	36.12.1901	Filing a Change Application
	36.12.1902	Change Application – Historic Use
	36.12.1903	Change Application – Adverse Effect
	36.12.1904	Change Application Criteria – Adequate Diverse Means and Operation

Subchapter 20

Salvage Water

Rule	36.12.2001	Salvage Water Applications
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Subchapters 21 through 49 reserved

Subchapter 50

Adjudication Fee

Rule	36.12.5001	Appeals Deadline
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NEXT PAGE IS 36-1715



## Subchapter 1

## Montana Water Use Act

**36.12.101 DEFINITIONS** Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

- (1) "Act" means the Montana Water Use Act, Title 85, chapter 2, parts, 1-4, MCA.
- (2) "Amount" refers to both a flow rate in gallons per minute (gpm), or cubic feet per second (cfs), and a volume of water in acre-feet (af).
- (3) "Animal unit month (AUM)" means a measurement of livestock numbers:
  - (a) one beef cow = 1 AUM
  - (b) one dairy cow = 1.5 AUM
  - (c) one horse = 1.5 AUM
  - (d) three pigs = 1 AUM
  - (e) five sheep = 1 AUM
  - (f) 300 chickens = 1 AUM
- (4) "Applicant" means the person, as defined in 85-2-102(14), MCA, who files a permit or change application with the department.
- (5) "Application" for purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, including criteria addendum form No. 600A, 600B, or 600ACF, or application to change a water right, Form No. 606, including criteria addendum Form No. 606A, 606B, 606ASW, or 606T.
  - (a) For the purposes of ARM 36.12.117 "application" means an application filed under 85-2-302, 85-2-316, 85-2-402, 85-2-407, and 85-2-408, MCA.
- (6) "Appropriation right" means any right to the use of water which would be protected under the law as it existed prior to July 1, 1973, and any right to the use of water obtained in compliance with the provisions and requirements of the act.
- (7) "Associated right" means multiple water rights filed by the same or different appropriators that share the same point of diversion, place of use, or place of storage.
- (8) "Basin closure area" means a hydrologic drainage basin area within which applications for certain water use permits cannot be accepted. Basin closure areas can be designated by statute, administrative rule, or in compacts.
- (9) "Certificate of survey number" means the official number given a parcel of land created by a registered land survey as filed with the county clerk and recorder.
- (10) "Cfs" means a flow rate of water in cubic feet per second and is equivalent to 448.8 gallons per minute. Applications for a flow rate of less than one cfs will be converted to gallons per minute.
- (11) "Change authorization" or "change" means an approval by the department to make a change in appropriation right as defined by 85-2-102, MCA, and allowed by 85-2-402, MCA.
- (12) "Claim" means a statement of claim filed pursuant to 85-2-221, MCA, for a water right established prior to July 1, 1973.

(13) "Combined appropriation" means an appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system.

(14) "Cone of depression" means a cone-shaped depression of water table or pressure surface developing around a pumping well.

(15) "Consumptive use" means the annual volume of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that does not return to ground or surface water.

(16) "Controlled groundwater area" means an area that has additional management controls applied to new groundwater uses pursuant to 85-2-506 through 85-2-508, MCA.

(17) "Criteria addendum" means that additional portion of an application on which substantial credible information must address the criteria listed in 85-2-311 and 85-2-402, MCA.

(18) "Dam" means an artificial barrier created by man-made means designed to form a basin to hold water and create a pond or reservoir.

(19) "Deep percolation" means water that percolates below the root zone and infiltrates a deeper aquifer that is not used by other appropriators or connected to a surface water source.

(20) "Department" means the Montana Department of Natural Resources and Conservation (DNRC).

(21) "Domestic use" means those water uses common to a household including:

- (a) food preparation;
- (b) washing;
- (c) drinking;
- (d) bathing;
- (e) waste disposal;
- (f) cooling and heating; and
- (g) garden and landscaping irrigation up to five acres.

(22) "Drainage device" means a mechanism capable of draining or releasing substantially the full capacity of a reservoir.

(23) "Element" means the factors which describe a water right including, but not limited to:

- (a) the priority date;
- (b) source of supply;
- (c) point of diversion;
- (d) means of diversion;
- (e) period of diversion;
- (f) flow rate;
- (g) volume;
- (h) acreage;
- (i) purpose;
- (j) place of use;
- (k) period of use;
- (l) storage capacity; and
- (m) storage location.

(24) "Existing right", in addition to the definition given the term by 85-2-102(8), MCA, includes any appropriation of water commenced prior to July 1, 1973, if completed according to the law as it existed when the appropriation was begun.

(25) "Evapotranspiration" means the loss of water from the soil both by evaporation and by transpiration from living plants.

(26) "Flow rate" is a measurement of the rate at which water flows or is diverted, impounded, or withdrawn from the source of supply for beneficial use, and commonly measured in cubic feet per second (cfs) or gallons per minute (gpm).

(27) "General abstract" means a department-generated document that reflects certain water right elements from the department's database.

(28) "Gpm" means a flow rate of water in gallons per minute.

(29) "Household" means the dwelling, house, or other domestic facilities where an individual, family, or social unit lives.

(30) "Hydraulically connected" means a saturated water-bearing zone or aquifer in contact with surface water or other water-bearing zone where rate of exchange of water between the two sources depends on the water level of the water-bearing zone or aquifer.

(31) "Hydrologic system" means the overall movement of water, including snow and ice, above, on, or below the earth's surface.

(32) "Irrigation use" means the controlled application of water to land to supply water requirements not satisfied by rainfall.

(33) "Means of diversion" means the type of structures, facilities, or methods used to appropriate, impound, or collect water. Examples include, but are not limited to the following:

- (a) dike;
- (b) dam;
- (c) ditch;
- (d) headgate;
- (e) infiltration gallery;
- (f) pipeline;
- (g) pump;
- (h) pit; or
- (i) well.

(34) "Median year" means that water flow would be at the 50th percentile. Half of the years would have had higher flows and the other half would have had lower flows.

(35) "Multiple domestic use" means a domestic use by more than one household or dwelling characterized by long-term occupancy as opposed to guests. Examples are domestic uses by:

- (a) colonies;
- (b) condominiums;
- (c) townhouses; and
- (d) subdivisions.

(36) "Municipal use" means water appropriated by and provided for those in and around a municipality or an unincorporated town.

(37) "Net depletion" for the purposes of 85-2-360, MCA, means the calculated volume, rate, timing, and location of reductions to surface water resulting from a proposed groundwater appropriation that is not offset by the corresponding accretions to surface water by water that is not consumed and subsequently returns to the surface water.

(38) "Notice area" means a geographic area determined by the department which may include water rights affected by an application.

(39) "Off-stream reservoir" means a reservoir that is not located on the source of supply and is supplied with water from a diversion means such as a pipe, headgate and ditch, or other means.

(40) "On-stream reservoir" means a reservoir that is located on the source of supply.

(41) "Owner of record" means a person who, according to the department's records, is the current owner of a water right.

(42) "Ownership update" means the updating of the department's water right ownership records by the filing of an ownership update form, Form No. 608, pursuant to 85-2-421 through 85-2-426, MCA. The department's form does not transfer water rights or legally determine water right ownership. It only updates the department's centralized ownership records as reflected by the legal documents that actually transfer water rights.

(43) "Period of diversion" means the period in a calendar year when water is diverted, impounded, or withdrawn from the source of supply. It is described by the earliest month and day and the latest month and day water is diverted during each year.

(44) "Period of use" means the period in a calendar year when water is used for specified beneficial use. It is described as the earliest month and day and the latest month and day the water is beneficially used during each year.

(45) "Place of use (POU)" means the land, facility, or site where water is beneficially used.

(46) "Point of diversion (POD)" means the location or locations where water is diverted from the source of supply.

(47) "Pit, pit-dam, or pond" means a body of water that is created by man-made means, which stores water for beneficial use.

(48) "Place of storage" means a reservoir, pit, pit-dam, or pond.

(49) "Potentially affected area" for the purposes of 85-2-361, MCA, means, as referred to in basin closure rules and in the context of a hydrogeologic assessment, the area or estimated area where groundwater will be affected by a proposed project. The identified area is not required to exceed the boundaries of the drainage subdivisions established by the Office of Water Data Coordination, United States Geological Survey, and used by the Water Court, unless the applicant chooses to expand the boundaries.

(50) "Possessory interest" means the right to exert some interest or form of control over specific land. It is the legal right to possess or use property by virtue of an interest created in the property, though it need not be accompanied by fee title, such as the right of a tenant, easement holder, or lessee.

(51) "Primary diversion" means the initial point from which a diversion means will remove or impound water from the source of supply.

(52) "Priority date" means the clock time, day, month, and year assigned to a water right application or notice upon department acceptance of the application or notice. The priority date determines the ranking among water rights.

(53) "Project" means a place of use that has its own identifiable flow rate, volume, and means of diversion.

(54) "Recreational use" includes but is not limited to swimming, boating, water sports, and fishing.

(55) "Reservoir" means a pond, pit, or pit-dam, created by man-made means that impounds and stores water.

(56) "Return flow" means that part of a diverted flow which is applied to irrigated land and is not consumed and returns underground to its original source or another source of water, and to which other water users are entitled to a continuation of, as part of their water right. Return flow is not wastewater. Rather, it is irrigation water seeping back to a stream after it has gone underground to perform its nutritional function. Return flow results from use and not from water carried on the surface in ditches and returned to the stream.

(57) "Secondary diversion" means a diversion that is not from the source of supply but is a diversion that is used after the water is diverted from the source of supply at the primary diversion. For example, a pump in a ditch or reservoir is a secondary diversion.

(58) "Seepage water" means that part of a diverted flow which is not consumptively used and which slowly seeps underground and eventually returns to a surface or groundwater source, and which other water users can appropriate, but have no legal right to its continuance. Typical examples of seepage water include underground losses from an irrigation ditch or pond.

(59) "Senior water right" means a water right with a priority date that is earlier in time than another water right.

(60) "Source aquifer" means the specific groundwater source from which water is diverted for a beneficial use.

(61) "Source of supply" means the specific surface or groundwater source from which water is diverted for a beneficial use.

(62) "Spring" means a hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground. A developed spring is groundwater if some physical alteration of its natural state occurs at its point of discharge from the ground, such as simple excavation, cement encasement, or rock cribbing. An undeveloped spring is surface water if no development occurs at its point of discharge and the appropriation is made from the waters flowing on the surface of the ground.

(63) "Stock use" means the use of water for livestock, including but not limited to cattle, horses, pigs, sheep, llamas, and animals owned and controlled on game farms. It does not include domestic animals such as dogs and cats or wild animals.

(64) "Surface water" means all water of the state at the surface of the ground, including but not limited to any river, stream, creek, ravine, coulee, undeveloped spring, lake, and other natural surface source of water regardless of its character or manner of occurrence.

(65) "Temporary authorization or temporary change" means an authorization to change granted pursuant to 85-2-407 and 85-2-408, MCA, for a specific period of time and with an automatic expiration date.

(66) "Temporary emergency appropriation" means the temporary beneficial use of water necessary to protect lives or property by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

(67) "Temporary permit" means a permit to appropriate water granted pursuant to Title 85, chapter 2, part 3, MCA, for a specific period of time and with an automatic expiration date.

(68) "Transitory diversion" means a movable diversion that will divert water from several nonspecific points along a source of supply.

(69) "Tributary" means the following:

- (a) a surface water source feeding another surface water source; or
- (b) groundwater hydraulically connected to a surface water source.

(70) "Unnamed tributary" means a surface water stream, coulee, or draw, which is not named on a United States Geological Survey (USGS) or Water Resources Survey (WRS) map.

(71) "Use of water for the benefit of the appropriator" means:

- (a) the amount of water reasonably needed for the intended purpose;
- (b) the amount of water needed for conveyance to the intended purpose; and
- (c) water used for instream flow.

(72) "Volume" means the acre-feet of water. Twelve acre-inches or 325,851 gallons are equal to one acre-foot.

(73) "Wastewater" means that part of a diverted flow which is not consumptively used and which returns as surface water to any surface water source, and which other water users can appropriate, but have no legal right to its continuance. A typical example is an irrigator who turns into the individual furrows traversing the irrigator's field from the head ditch more water than can seep into the ground. The water that stays on the surface and is not absorbed into the earth and which remains at the end of the furrow and is collected in a wastewater ditch is wastewater.

(74) "Water flow estimating technique" means a mathematical method of estimating flow generally accepted by the department. This may be accomplished by correlating measurements of diversion system components with actual water use to estimate flow rate or volume of water used. An example is the use of measurements of power consumed by a pump to estimate the amount of water delivered by a pump. Another flow estimating technique would be to apply specific formulas developed by professional hydrologists based on climatic, basin, or stream channel characteristics to estimate stream flow.

(75) "Water measuring device" means equipment that directly measures water flow in open or closed channels and conduits. Examples would be flow meters, weirs, flumes, and bucket and stop watch.

(76) "Water Resources Survey (WRS)" means a survey by county of water resources and water rights in Montana by the former State Engineer's Office or Water Resources Board, predecessors of the department.

(77) "Water saving method" means a change to the actual water use system or management of water use in which the modification being made would decrease the amount of water needed to accomplish the same result. Water saving methods might include:

- (a) changing from a ditch conveyance to a pipeline;
- (b) lining an earthen ditch with concrete or plastic; and
- (c) changing management of a water system to decrease water consumption.

(78) "Zone of influence" means the horizontal extent of the cone of depression. (History: 85-2-113, 85-2-308, 85-2-370, MCA; IMP, 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-514, 85-2-518, 85-2-520, MCA; NEW, Eff. 7/5/73; AMD, Eff. 2/4/75; AMD, 1987 MAR p. 1560, Eff. 9/11/87; AMD, 1992 MAR p. 1615, Eff. 7/31/92; AMD, 1993 MAR p. 1335A, Eff. 6/25/93; AMD, 2004 MAR p. 3036, Eff. 1/1/05; AMD, 2006 MAR p. 1387, Eff. 6/2/06; AMD, 2007 MAR p. 508, Eff. 3/26/07; AMD, 2007 MAR p. 1098, Eff. 8/10/07; AMD, 2008 MAR p. 140, Eff. 2/1/08; AMD, 2008 MAR p. 567, Eff. 3/28/08.)

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at <http://dnrc.mt.gov/wrd/default.asp>. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) Form No. 600, "Application for Beneficial Water Use Permit" (for groundwater developments in excess of 35 gpm or ten acre-feet per year and surface water appropriations):

(i) Form No. 600A, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of less than 4000 acre-feet and 5.5 cfs; or

(ii) Form No. 600B, "Criteria Addendum, Application for Beneficial Water Use Permit," information must be submitted for appropriations of 4000 acre-feet or more and 5.5 cfs or more.

(b) Form No. 602, "Notice of Completion of Groundwater Development" (for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year);

(c) Form No. 603, "Well Log Report";

(d) Form No. 605, "Application for Provisional Permit for Completed Stockwater Pit or Reservoir" (maximum capacity of the pit or reservoir must be less than 15 acre-feet);

(e) Form No. 606, "Application to Change a Water Right":

(i) submission of this application must include information required by the following criteria addenda, when applicable:

(A) Form No. 606B, "Supplement to Application to Change a Water Right" (for changes in purpose of use or place of use of 4000 or more acre-feet a year and 5.5 cfs or more);

(B) Form No. 606ASW, "Supplement to Application to Change a Water Right" (for salvage water); or

(C) Form No. 606T, "Temporary Change Supplement to Application to Change a Water Right".

(f) Form No. 607, "Application for Extension of Time";

(g) Form No. 608, "Water Right Ownership Update":

(i) Form No. 608A, "Addendum to Water Right Ownership Update Form for Apportioned Water Right".

(h) Form No. 611, "Objection to Application";

(i) Form No. 613, "Fee Schedule for Water Use in Montana";

(j) Form No. 615, "Water Conversion Table";



- (k) Form No. 617, "Project Completion Notice for Permitted Water Development";
- (l) Form No. 618, "Project Completion Notice for Change of a Water Right";
- (m) Form No. 625, "Water Right Correction";
- (n) Form No. 626, "Application to Renew a Temporary Water Right Change";
- (o) Form No. 630, "Controlled Groundwater Area Petition";
- (p) Form No. 631, "Petition for Closure of a Highly Appropriated Basin";
- (q) Form No. 634, "Replacement Well Notice" (for municipal wells that do not exceed 450 gpm or for all other wells that do not exceed 35 gpm and ten acre-foot per year);
- (r) Form No. 635, "Redundant Well Construction Notice" (for redundant wells in a public water supply system as defined by 75-6-102, MCA);
- (s) Form No. 636, "Interim Permit Request";
- (t) Form No. 637, "Reinstatement Request" (for reinstating a permit or change authorization); and
- (u) Form No. 638, "Water Reservation Application for Instream Flow" (for instream flow water reservation applications allowed under the United States of America, Department of Agriculture, Forest Service-Montana Compact, Article VI, section B). (History: 85-2-113, MCA; IMP, 85-2-113, MCA; NEW, Eff. 7/5/73; AMD, Eff. 2/4/75; AMD, 1982 MAR p. 702, Eff. 4/16/82; AMD, 1984 MAR p. 882, Eff. 6/1/84; AMD, 1987 MAR p. 1560, Eff. 9/11/87; AMD, 1992 MAR p. 1615, Eff. 7/31/92; AMD, 1996 MAR p. 2430, Eff. 9/20/96; AMD, 2000 MAR p. 636, Eff. 2/25/00; AMD, 2003 MAR p. 1535, Eff. 7/18/03; AMD, 2008 MAR p. 326, Eff. 2/15/08.)

36.12.103 FORM AND SPECIAL FEES (1) A filing fee, if required, shall be paid at the time the permit, change, notice of completion, extension of time request, temporary change renewal, ownership update, or petition application (hereafter singularly or collectively referred to as application) is filed with the department. The department will not process any application without the proper filing fee. Failure to submit the proper filing fee within 30 days after notice shall result in a determination that the application is not correct and complete and it shall be terminated.

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of \$800.

(b) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for a groundwater appropriation of 35 gallons per minute or less, there shall be a fee of \$200.

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, nor filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of \$600.

(d) For an Interim Permit Request, Form No. 636, there shall be a fee of \$150 in addition to (1)(a), (b), or (c).

(e) For a Notice of Completion of Groundwater Development (for groundwater developments with a maximum use of 35 gpm or less, not to exceed ten acre-feet per year), Form No. 602, there shall be a fee of \$125.

(f) For an Application for Provisional Permit for Completed Stockwater Pit or Reservoir (maximum capacity of the pit or reservoir must be less than 15 acre-feet), Form No. 605, there shall be a fee of \$125.

(g) For an Application to Change a Water Right, Form No. 606, there shall be a fee of \$700, except there shall be a fee of \$200 when:

(i) the change application, Form No. 606, concerns a replacement well, greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on the same source; or

(ii) the change application, Form No. 606, concerns only moving or adding stock tanks to an existing system.

(h) For an Application for Extension of Time, Form No. 607, there shall be a fee of \$200.

(i) For a Water Right Ownership Update, Form No. 608, there shall be a fee of \$50, plus \$10 for each water right transferred after the first water right, not to exceed a maximum of \$300.

(j) For filing an Objection to Application, Form No. 611, there shall be a fee of \$25.

(k) For an Application to Renew a Temporary Water Right Change, Form No. 626, there shall be a fee of \$200.

(l) For a Controlled Groundwater Area Petition, Form No. 630, there shall be a fee of \$1500, plus the petitioner shall also pay:

(i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner, notice of hearing, and petition to all land owners and water right owners located within the proposed boundaries, and other persons as required by 85-2-506, MCA;

(ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;

(iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;

(iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.

(m) For a Petition for Closure of a Highly Appropriated Basin, Form No. 631, there shall be a fee of \$1500, plus the petitioner shall also pay:

(i) publication costs of the proposed rules in the Montana Administrative Register;

(ii) photocopy and postage costs for copying and mailing the Administrative Rule Proposal Notice and appointment of the hearing examiner to all land owners and water right owners located within the proposed boundaries and other persons as required by 85-2-319, MCA;

(iii) photocopy and postage costs for copying and mailing the Notice of Adoption and other documents as needed;

(iv) newspaper publication of the Notice of Rulemaking Hearing;

(v) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and

(vi) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-319, MCA, except the cost of salaries of the department personnel.

- (n) For a Replacement Well Notice, Form No. 634, there shall be a fee of \$100.
- (o) For a Redundant Well Construction Notice, Form No. 635, there shall be a fee of \$50.
- (p) For a Reinstatement Request, Form No. 637, there shall be a fee of \$200.
- (q) For a Water Reservation Application for Instream Flow, Form No. 638, there shall be a fee of \$800, plus the applicant shall also pay:
  - (i) photocopy and postage costs for copying and mailing the appointment of the hearing examiner and notice of hearing;
  - (ii) photocopy and postage costs for copying and mailing the hearing examiner's proposal for decision, final order, and other orders as needed;
  - (iii) newspaper publication of the notice of hearing and orders as required by statute and the hearing examiner;
  - (iv) actual rental costs for the hearing location and required sound equipment as determined by the hearing examiner; and
  - (v) other costs of holding the hearing, conducting investigations or studies, and making records pursuant to 85-2-506 and 85-2-507, MCA, except the cost of salaries of the department personnel.
- (2) There shall be no fees charged for filing the following forms:
  - (a) Form No. 608A, Addendum to Water Right Ownership Update Form for Apportioned Water Right;
  - (b) Form No. 617, Project Completion Notice of Permitted Water Development;
  - (c) Form No. 618, Project Completion Notice for Change of a Water Right;
  - (d) Form No. 625, Correction to a Water Right.
- (3) The department will charge special fees not to exceed reasonable amounts for the following services:
  - (a) microfilm, reader-printer copies;
  - (b) photostatic copies;
  - (c) requested computer services;
  - (d) blueprints or tracings;
  - (e) costs associated with contracting for professional hearings officer services;
  - (f) audio copy of hearing. (History: 85-2-113, MCA; IMP, 85-2-113, 85-2-312, MCA; NEW, Eff. 7/5/73; AMD, Eff. 2/4/75; AMD, 1982 MAR p. 702, Eff. 4/16/82; AMD, 1984 MAR p. 882, Eff. 6/1/84; AMD, 1985 MAR p. 1242, Eff. 8/30/85; AMD, 1987 MAR p. 1560, Eff. 9/11/87; AMD, 1991 MAR p. 1009, Eff. 6/28/91; AMD, 1992 MAR p. 1615, Eff. 7/31/92; AMD, 1993 MAR p. 1335A, Eff. 6/25/93; AMD, 1996 MAR p. 2430, Eff. 9/20/96; AMD, 1997 MAR p. 2084, Eff. 11/18/97; AMD, 2000 MAR p. 636, Eff. 2/25/00; AMD, 2003 MAR p. 1535, Eff. 7/18/03; AMD, 2008 MAR p. 326, Eff. 2/15/08.)

36.12.104 ISSUANCE OF INTERIM PERMITS (1) Pending final approval or denial of an application for a provisional permit, the department may, in its discretion and upon proper application, issue an interim permit authorizing an applicant to begin appropriating water immediately.

(a) The department may issue an interim permit, unless there is substantial information available to the department that the criteria for issuing a provisional permit under 85-2-311, MCA, cannot be met.

(b) An interim permit may be issued subject to any terms and conditions the department considers necessary to protect the rights of prior appropriators. Violation of a term or condition shall automatically void an interim permit.

(2) The issuance of an interim permit does not entitle an applicant to a provisional permit, and approval of the application for a provisional permit is subject to the procedures and criteria set out in the act.

(3) A person may not obtain any vested right to an appropriation obtained under an interim permit by virtue of the construction of diversion works, purchase of equipment to apply water, planting of crops, or other action where the provisional permit is denied or is modified from the terms of the interim permit. (History: 85-2-113, MCA; IMP, 85-2-113, 85-2-311 through 85-2-314, MCA; NEW, Eff. 7/5/73; AMD, Eff. 2/4/75; AMD, 1987 MAR p. 1560, Eff. 9/11/87; AMD, 1993 MAR p. 1335A, Eff. 6/25/93.)

36.12.105 TEMPORARY EMERGENCY APPROPRIATIONS (1) A temporary emergency appropriation may be made without prior approval from the department, but the use must cease immediately when the water is no longer required to meet the emergency.

(2) A temporary emergency appropriation does not include the use of water for the ordinary operation and maintenance of any trade or business. (History: 85-2-113, MCA; IMP, 85-2-113, MCA; NEW, Eff. 7/5/73; AMD, Eff. 2/4/75; AMD, 2003 MAR p. 1535, Eff. 7/18/03.)

36.12.106 TESTING AND MONITORING (1) Water testing or monitoring is not a beneficial use of water requiring the filing of a permit application.

(2) A permit is not required if the intent of a person is to conduct aquifer tests, water quality tests, water level monitoring or other testing or monitoring of a water source. (History: 85-2-113, MCA; IMP, 85-2-113, MCA; NEW, 1993 MAR p. 1335A, Eff. 6/25/93.)

36.12.107 FILING FEE REFUNDS (1) An applicant may be entitled to a refund if the applicant withdraws an application prior to public notice or a deadline set by the department for the applicant to make an application correct and complete.

(2) No refund will be authorized if substantial direct processing costs have been accrued in making the application correct and complete prior to publication or department waiver of publication.

(3) No refund will be authorized upon termination of an application due to an applicant's failure to provide additional information necessary to make an application correct and complete within the deadlines provided by the department.

(4) No refund will be authorized once the public notice of the application has been initiated.

(5) If an applicant inadvertently files the wrong form, the applicant may apply the fee paid to the fee required for the correct form, pay the difference due, or be entitled to a refund if overpayment is made.

(6) If a water right application is withdrawn within 30 days after the objection deadline, the Objection to Application filing fee will be refunded.

(7) A refund of the Objection to Application filing fee will not be authorized if a person objecting to a proposed application under 85-2-308, MCA, does not correct the deficiencies identified in the Objection Deficiency Notice by the deadline specified in the notice.

(8) With the exception of (6), a refund of the Objection to Application filing fee will not be authorized. (History: 85-2-113, 85-2-302, MCA; IMP, 85-2-302, 85-2-113, MCA; NEW, 2003 MAR p. 1535, Eff. 7/18/03; AMD, 2008 MAR p. 567, Eff. 3/28/08.)

36.12.108 PUBLIC NOTICE COSTS (1) The department will require a permit or change applicant or a petitioner in the case of basin closure or controlled groundwater petition to provide public and individual notice as required by law.

(2) The department shall provide the applicant or petitioner with:

(a) instructions and deadlines for providing such notice;

(b) a copy of the public notice; and

(c) a list of newspapers, government agencies, and individuals to whom the notice must be sent.

(3) Failure to properly notice the application as required by the department will result in termination of an application or petition.

(4) The costs of completing the public notice as directed by the department shall be the responsibility of the applicants or petitioners. (History: 85-2-113, MCA; IMP, 85-2-113, 85-2-307, MCA; NEW, 2003 MAR p. 1535, Eff. 7/18/03.)

36.12.109 A PRESENT VALUE FORMULA FOR DETERMINING A SEVERANCE FEE IN A PETITION TO EXCLUDE A TRACT FROM FUTURE SERVICES, ASSESSMENTS, AND LIABILITIES OF AN IRRIGATION DISTRICT

(1) The present values used in determining the severance fee pursuant to 85-7-2125, MCA, shall be calculated as follows:

(a) The present value of debt to be included in the severance fee shall be equal to the existing irrigation district debt apportioned to the petitioned tract.

(b) Future operation and maintenance costs are assumed to be based on the average of the operation and maintenance costs for the three most recent years before severance and are assumed to change annually over the 20-year period at a rate equal to the average annual change in the consumer price index (CPI-U) for the most recent ten years before severance.

(2) The formula for calculating the average annual change in the CPI-U is:

$(v_0 / v_{0-10})^{1/10} - 1$ , where  $v_0$  is the CPI-U index value for the most recent December before severance, and  $v_{0-10}$  is the December index value ten years prior to  $v_0$ .

(3) The present value formula for operation and maintenance costs is available through most spreadsheet programs and is specified as follows:

$\sum_{i=1}^n OM_i / (1 + r)^i$ , where  $n = 20$  years,  $OM_i$  is the estimated cost of operation

and maintenance for each year and  $r$  is equal to the average yield for ten-year treasury notes for the most recent ten-year period before severance. (History: 85-7-2125, MCA; IMP, 85-7-2125, MCA; NEW, 2004 MAR p. 649, Eff. 3/26/04.)

36.12.110 LEGAL LAND DESCRIPTION STANDARDS (1) Primary or secondary points of diversion must be described as one or more of the following:

(a)  $\frac{1}{4}\frac{1}{4}\frac{1}{4}$  section, section, township, range and county;

(b) lot, block, subdivision,  $\frac{1}{4}$  section, section, township, range and county;

(c) government lot,  $\frac{1}{4}$  section, section, township, range and county; or

(d) certificate of survey number with or without a lot number,  $\frac{1}{4}$  section, section, township, range and county.

(2) The point of diversion legal description of an on-stream reservoir must be described as the point where the dam or pit crosses the source of supply.

(3) Transitory diversions must be described as the most upstream diversion point and a measurement in stream miles downstream from the upstream point. For example the transitory diversion will extend from the upstream point to approximately one mile downstream.

(4) If secondary diversions are described, they must be identified as "secondary".

(5) The legal land description for the place of use must be listed to the nearest reasonable and concise legal land description. For example, it would be appropriate to describe 20 acres in the N½NWNW rather than ten acres in the NWNWNW and ten acres in the NENWNW. For a subdivision covering most of the SW, it would be appropriate to describe the place of use as the SW rather than the NWSW, NESW, SWSW, and SESW. (History: 85-2-113, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2005 MAR p. 162, Eff. 1/1/05.)

36.12.111 MAP STANDARDS (1) A United States geological survey (USGS) quadrangle map or United States Department of Agriculture (USDA) aerial photo must be included with the application and the following items must be clearly identified on the map:

- (a) north arrow;
- (b) scale bar;
- (c) section corners and numbers;
- (d) township and range numbers;
- (e) all past and proposed points of diversion;
- (f) all past and proposed places of use;
- (g) past and proposed reservoir locations; and
- (h) past and proposed ditch or pipeline locations.

(2) Maps must reflect the place of use of all associated water rights.

(3) Additional maps must be submitted if the information on one map cannot convey the required information clearly and must be of the same scale so that they can be overlain.



(4) For change applications to irrigation water rights, in addition to the map required in (1) and (2), a copy of the Water Resources Survey map, if available for the land affected by the change, shall be submitted with the historically irrigated acreage identified.

(5) For change applications, all historically irrigated acreage must be identified on an aerial photograph that shows the date the aerial photo was taken.

(6) In addition, a county plat map obtained from the county office may be submitted. The county plat map must show the same information as required under (1). (History: 85-2-113, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2004 MAR p. 3036, Eff. 1/1/05.)

### 36.12.112 PERIOD OF DIVERSION AND PERIOD OF USE STANDARDS

(1) Deviations from the standards listed below require information supporting the period of diversion or use requested in an application:

- |   |                          |
|---|--------------------------|
| (a) domestic  | January 1 to December 31 |
| (b) stock   | January 1 to December 31 |
| (c) irrigation based on the climatic area designated by the USDA Natural Resources and Conservation Service (NRCS) which is generally as follows: |                          |
| (i) climatic area I   | March 15 to November 15  |
| (ii) climatic area II   | April 1 to October 31    |
| (iii) climatic area III   | April 15 to October 15   |
| (iv) climatic area IV   | April 20 to October 10   |
| (v) climatic area V   | April 25 to October 5    |

(2) Applications for diversions into a storage reservoir for later use must include the period of diversion for when water will be diverted into the reservoir and the period of use when water will be used from the reservoir.

(3) Applications for temporary permits must identify the beginning and ending month, day, and year.

(4) The basis for the requested periods for other uses must be explained. (History: 85-2-113, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2004 MAR p. 3036, Eff. 1/1/05.)

36.12.113 RESERVOIR STANDARDS (1) An application project involving a new or existing reservoir must include the annual volume of water that will evaporate from the reservoir water surface.

(2) The application must include information explaining how the storage reservoir will be managed to satisfy senior water rights. Senior water users are not entitled to water that has been legally stored.

(3) If applicable, preliminary design specifications for a reservoir's primary and emergency spillways must be included.

(4) If a reservoir is located off-stream:

(a) the conveyance means to and from the reservoir must be identified; and

(b) any losses that may occur with the means of conveyance must be calculated and identified.

(5) For on-stream reservoirs, no flow rate is required. If a flow rate is requested for an on-stream reservoir, documentation must show why a flow rate is needed and reasonable.

(6) Water tanks or cisterns that are a part of a water system are not considered storage reservoirs and a water right application is not needed to add a water storage tank or cistern as long as the flow rate and volume of a water right is not being increased.

(7) If the application is for a reservoir for which the above standards are not applicable, the applicant must explain the reason why the standard is not applicable. (History: 85-2-113, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2004 MAR p. 3036, Eff. 1/1/05.)

36.12.114 SOURCE NAME STANDARDS (1) A source name must adhere to one of the following, which are shown in order of preference:

- (a) USGS map;
- (b) water resource survey book; or
- (c) DNRC water rights database.

(2) Waste and seepage is not an accepted source name. Waste and seepage must be described as an unnamed tributary (UT) to the next named source into which the UT flows. (History: 85-2-113, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2004 MAR p. 3036, Eff. 1/1/05.)

36.12.115 WATER USE STANDARDS (1) A water right has several elements, one of which is the amount of water that is used for each purpose described in the right. A reasonable amount of water will vary with the type and location of the use and will depend on various circumstances such as:

- (a) soil conditions;
- (b) method of conveyance;
- (c) topography;
- (d) climate;
- (e) system efficiency; or
- (f) other conditions affecting the particular use.

(2) The department will use the following standards when reviewing notices or applications for new uses of water:

- (a) for domestic use, for one household, 1.0 acre-foot per year of water for year-round use;
- (b) for lawn, garden, shrubbery, and shelterbelts, 2.5 acre-feet per acre per year;
- (c) for stockwater, a consumptive use of 15 gallons per day or .017 acre-foot per year per animal unit. Animal unit equivalencies for water consumption are set out in ARM 36.12.101 and the water conversion table, Form No. 615;
- (d) fire protection water needs shall be determined by the type of equipment used, diversion rate, the size of the area to be covered, the frequency of the water use and must be explained and documented.
- (e) For irrigation, the following table applies:

## Irrigation Standards

	Climatic Area <sup>1</sup> Acre Feet per Acre				
	I	II	III	IV	V
Sprinkler Irrigation 70% Efficiency	2.63 - 3.04	2.30 - 2.69	2.08 - 2.41	1.76 - 2.07	1.26 - 1.48
Level Border 60% Efficiency Design Slope Level	3.07 - 3.55	2.69 - 3.15	2.43 - 2.81	2.06 - 2.41	1.47 - 1.73
Graded Border 70% Efficiency Slope Group Design Slope .10% Design Slope .20% Design Slope .40%	2.63 - 3.04	2.30 - 2.69	2.08 - 2.41	1.76 - 2.07	1.26 - 1.48
Graded Border 65% Efficiency Design Slope .75% Design Slope 1.5%	2.84 - 3.28	2.48 - 2.90	2.24 - 2.59	1.90 - 2.23	1.36 - 1.60
Graded Border 60% Efficiency Design Slope 3.0%	3.07 - 3.55	2.69 - 3.15	2.43 - 2.81	2.06 - 2.41	1.47 - 1.73
Furrow 70% Efficiency Design Slope .10% Design Slope .20% Design Slope .40%	2.36 - 2.74	2.11 - 2.44	1.87 - 2.16	1.39 - 1.70	NA
Furrow 65% Efficiency Design Slope .75%	2.54 - 2.95	2.27 - 2.63	2.02 - 2.33	1.50 - 1.83	NA
Furrow 60% Efficiency Design Slope 1.5%	2.75 - 3.19	2.46 - 2.85	2.19 - 2.52	1.62 - 1.98	NA
Contour Ditch 60% Efficiency Design Slope .75%	3.07 - 3.55	2.69 - 3.15	2.43 - 2.81	2.06 - 2.41	1.47 - 1.73
Contour Ditch 55% Efficiency Design Slope 1.5% Design Slope 3.0%	3.35 - 3.87	2.93 - 3.43	2.65 - 3.07	2.24 - 2.63	1.60 - 1.88
Contour Ditch 45% Efficiency Design Slope 6.0%	4.10 - 4.73	3.58 - 4.19	3.24 - 3.75	2.74 - 3.22	1.96 - 2.30

<sup>1</sup> The irrigation climatic areas are identified in the 1986 Irrigation Climatic Areas of Montana map. Climatic area I is high consumptive use, climatic area II is moderately high consumptive use, climatic area III is moderate consumptive use, climatic area IV is moderately low consumptive use, and climatic area V is low consumptive use.

(3) A permit is required when a reservoir is proposed to include fire protection purposes and the volume of water reasonably needed for fire protection must be explained and must reference reliable industry sources.

(4) For fire protection reservoirs located within a basin closure area, evaporation losses must be made up from nontributary water sources or addressed in an augmentation plan.

(5) The flow rate and volume of water for any uses not listed in this rule must be calculated, explained, and documented based on the beneficial use and operation of the project.

(6) Deviations outside the standards will require information supporting the requested amount. (History: 85-2-113, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2004 MAR p. 3036, Eff. 1/1/05.)

36.12.116 EVAPORATION STANDARDS (1) The following reports contain acceptable methods for estimating evaporation losses:

(a) Joint Technical Working Group Report, Water Rights Compact Between the State of Montana and the Department of the Interior, Bureau of Land Management, November 1998;

(b) Estimation of Evaporation from Shallow Ponds and Impoundments in Montana, Donald E. Potts, Miscellaneous Publication No. 48, Montana Conservation and Experiment Station School of Forestry, University of Montana, Missoula, March 1988;

(c) Evaporation Pond Design for Agricultural Wastewater Disposal, USDA Soil Conservation Service, Montana Technical Note: Environment No. 7, February 1974;

(d) Evaporation from Lakes and Reservoirs, a study based on 50 years of weather bureau records, Minnesota Resource Commission, June 1942; and

(e) A standard USGS evaporation pan is acceptable. The standard pan is four feet in diameter and ten inches deep and measured daily.

(2) Deviations from the acceptable standards in (1) require additional information supporting the volume requested for evaporation losses.

(3) The department will determine the acceptability of other evaporation loss estimates on a case-by-case basis. (History: 85-2-113, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2005 MAR p. 101, Eff. 1/1/05.)

36.12.117 OBJECTION TO APPLICATION (1) A person objecting to a proposed application under 85-2-308, MCA, must file an objection to an application on Form No. 611, Objection to Application, which can be obtained from the department, and must comply with the requirements set forth in this rule.

(2) A separate Objection to Application must be filed for each water right application.

(3) Persons owning separate water rights must each file an Objection to Application form. For example, if person A owns a water right and B owns a different water right and both want to file an objection to the same application, owner A and owner B must each file a separate Objection to Application form.

(4) Co-owners (owners of a water right that is not split between the owners) of an undivided water right may file one Objection to Application form.

(5) Each objector who wants to participate in the department's contested case hearing must sign the Objection to Application form.

(6) An Objection to Application is timely if the postmark date on the form is on or before the objection deadline stated in the public notice of the application. A fax of the Objection to Application form will be accepted, provided the original Objection to Application form is postmarked or hand-delivered timely. Electronic mail (e-mail) submissions of the Objection to Application will not be accepted.

(7) An Objection to Application filed with the department before an application has been published will not be accepted and will be returned.

(8) Upon receipt of an Objection to Application or response to an Objection Deficiency Notice, the department will place the envelope postmark date on the form. If the postmark date is not legible, the department will assign the date as two days prior to the department's receipt of the objection form. An objector is solely responsible for ensuring timeliness, a legible postmark, and filing of the objections.

(9) An Objection to Application is correct and complete if it includes the following legible information:

- (a) filing fee;
- (b) objector's name and mailing address;
- (c) name of the water right applicant;
- (d) water right application number;
- (e) if an objector is claiming the objector's water right will be adversely affected if the application were granted, the objector must provide the department-assigned water right number. If the water right was exempt from the statewide water right filing requirements and is not on record with the department, the objector must provide the following information:
  - (i) date of first use;
  - (ii) source;
  - (iii) means of diversion;
  - (iv) type of use (stock or domestic);
  - (v) the flow rate and volume of water used;
  - (vi) the point of diversion; and

(f) facts indicating that the application does not meet one or more of the applicable criteria set forth in 85-2-302, 85-2-311, 85-2-316, 85-2-402, 85-2-407, or 85-2-408, MCA. The facts provided must specifically describe why or how one or more of the criteria are not met;

(g) facts explaining how the person has standing to object. To have standing, a person must have property, water rights, or other interests that would be adversely affected were the application to be granted. The objection must describe how the person's property, water rights, or interests will be adversely affected if the water right application were granted; and

(h) signature of the objector or the objector's legal representative. If a representative of the objector other than objector's attorney signs the Objection to Application affidavit, the representative shall state the relationship of the representative to the objector and provide documentation demonstrating the authenticity of that relationship.

(10) An objection that is deemed correct and complete and valid pursuant to 85-2-308(3) and (6), MCA, may proceed to an administrative hearing. The administrative hearing will be limited to the criteria objected to in the objection. An objector may participate in the administrative hearing only on the criteria to which the objector specifically objected and which is determined valid by the department.

(11) The department will mail notice to the objector of the Objection to Application of any deficiencies in the objection. The objector must address the information requested in the Objection Deficiency Notice and must have the response postmarked or hand delivered to the department within 15 calendar days from the date on the Objection Deficiency Notice. A fax submission of the deficiency letter response will be accepted provided the original response is postmarked timely. Electronic mail (e-mail) submissions of a response will not be accepted.

(12) If the objector does not correct the deficiencies as determined by the department by the deadline, the objection will be terminated without further notice.

(13) The department will document a valid objection by completing an objection validity form.

(14) The department will determine on which criteria the objector has filed a valid objection.

(15) An objection may be withdrawn at any time in writing. A party withdrawing an objection will not be considered a party by the department to any hearing that may be held by the department.

(16) An applicant is not required to meet a water quality criterion when a valid water quality objection is not raised or is withdrawn.

(17) Private agreements between applicants and objectors which provide for the withdrawal of objections and include conditions that must be met by an applicant or objector may not be recognized by the department or included in a granted application. The department will only place a condition on a granted application if the department determines the condition is necessary to meet the application criteria. (History: 85-2-308, MCA; IMP, 85-2-308, MCA; NEW, 2008 MAR p. 567, Eff. 3/28/08.)

Rules 36.12.118 and 36.12.119 reserved

36.12.120 BASIN CLOSURE AREA EXCEPTIONS AND COMPLIANCE

(1) In the numerous basin closure areas in Montana, the department cannot process an application unless it qualifies as a basin closure exception.

(2) An applicant must provide a written summary of their application information explaining how their application meets the basin closure exceptions and why their application located in a basin closure area can be processed.

(3) The department will determine whether an application in a basin closure area can be processed based on the information received from the applicant and will document its findings before it will review the application to determine whether it is correct and complete.

(4) While the department may determine that an application located in a basin closure area can be processed, an objector is able to refute the department's determination.

(5) An applicant must identify the potentially affected area and provide a map depicting that area.

(6) A net depletion analysis must be submitted with the water right application and must include but is not limited to analysis of the following factors within the potentially affected area:

(a) evidence addressing the hydraulic connection between the source aquifer and all surface water. Surface water means, in addition to ARM 36.12.101(64) and for the purposes of 85-2-360 through 85-2-362, MCA, includes but is not limited to irrigation canals and drains;

(b) evidence of propagation of drawdown from pumping a proposed well or other groundwater diversion and volume, rate, timing, and location of any resulting surface water effects;

(c) evidence of the comparison of the proposed flow rate and period of diversion to similar types of existing water uses;

(d) estimates of the monthly volume of water consumed by a proposed project through evaporation, evapotranspiration, and all other forms of consumption associated with the proposed project;

(e) an assessment of potential return flows to a source aquifer or surface water source and the volume, rate, timing, and location of return flows;

(f) in addition to ARM 36.12.101(56) and for the purposes of 85-2-361, MCA, return flow includes but is not limited to any treated wastewater if the treated wastewater will be used as part of an aquifer recharge plan;

(g) the volume, rate, timing, and locations of accretions to surface water that is not consumed and subsequently returns to surface water; and

(h) a water balance table must be included that describes the monthly and total annual water balance for the proposal.



(7) An applicant must provide a list and map of the points of diversion of surface water appropriation rights and groundwater rights on record with the department that are located within the potentially affected area.

(8) Information required by the hydrogeologic assessment may not be sufficient to meet applicable criteria under 85-2-311, MCA, including but not limited to adverse effect to a prior appropriator. The applicant for a beneficial water use permit pursuant to 85-2-311, MCA, is responsible for providing sufficient evidence to meet all applicable criteria. (History: 85-2-113, 85-2-370, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2004 MAR p. 3036, Eff. 1/1/05; AMD, 2008 MAR, p. 140, Eff. 2/1/08.)

36.12.121 AQUIFER TESTING REQUIREMENTS (1) There are numerous tests that can be performed on wells and aquifers, with a variety of objectives and procedures. An adequate aquifer test will depend on factors such as whether the well is located in a basin closure area (see ARM 36.12.120), the expected pumping schedule of the well, the potential interference with existing water rights and the characteristics of the aquifer in which the well is completed.

(2) Applicants are encouraged to confer with department staff prior to designing an aquifer test to ensure that the test will not have to be repeated, which may require additional expense.

(a) Department staff will provide guidance on testing procedures, monitoring, and reporting, but will not provide technical support or assistance.

(3) Aquifer testing must follow standard procedures that are discussed in hydrogeology textbooks and professional literature. The following are preferred aquifer testing procedures:

(a) A hydrogeologist, hydrologist, or engineer familiar with aquifer testing procedures must supervise the aquifer test, however, the supervisor does not need to be on site.

(b) Aquifer test data Form No. 633, or equivalent, must be used to record the data required for the test.

(c) Pumping must be maintained at a constant discharge rate equal to or greater than the proposed pumping rate for the entire duration of the test. If the discharge rate varies, the applicant must note the clock time and discharge rate.

(d) Minimum duration of pumping during an aquifer test must be 24 hours for a proposed use or discharge of 150 gpm or less and a proposed volume of 50 acre-feet or less.

(e) Minimum duration of pumping during an aquifer test must be 72 hours for a proposed use or discharge of greater than 150 gpm and proposed volume greater than 50 acre-feet.

(f) Discharge of the pumped well must be measured with a reliable measuring device, which can include a barrel, in-line flow meter, flume, or weir.

(g) Discharge rate must be monitored and recorded with clock time and adjusted if necessary at 15-minute intervals during the first three hours of the aquifer test and at frequent intervals until the end of the test to maintain a constant discharge.

(h) Discharged water must be conveyed a sufficient distance from the production and observation wells to prevent recharge to the aquifer during the test. Adequate water conveyance devices include pipe, large-diameter hose (e.g., fire hose), lined ditch or canal, or an existing irrigation system.

(4) The following procedures are preferred to ensure monitoring is adequate:

(a) One or more observation wells must be completed in the same water-bearing zone(s) or aquifer as the proposed production well and close enough to the production well so that drawdown is measurable and far enough that well hydraulics do not affect the observation well.

(b) One or more observation wells must be completed in the overlying water-bearing zone(s) or aquifer if the proposed production well is purported to be completed in a hydraulically disconnected deeper aquifer.

(c) An observation well can be an existing well. An existing well should not be pumped, or if pumped should be monitored at a frequency necessary to separate the effects of its pumping.

(d) New observation wells must be constructed as described in ARM Title 36, chapter 21, subchapter 6. However, observation wells less than ten feet deep are not subject to those rules. In those cases, observation wells might be constructed by simple excavation, or installing PVC pipe, perforated black pipe, or a sand point.

(e) Electronic pressure transducer/data logger instrumentation, electric well probes, pressure gauges on turbine pumped wells, or graduated steel tapes are acceptable methods of measuring groundwater levels.

(f) Groundwater levels in the production, at least one of the observation wells in the source aquifer, and at least one observation well in the overlying water-bearing zone or aquifer must be monitored at frequent intervals for at least two days prior to beginning the aquifer test to evaluate background water-level trends and the prepumping hydraulic gradient. An applicant must evaluate and correct for background water-level trends.

(g) Groundwater-level drawdown in the production well and monitored observation well(s) during the pumping phase of the aquifer test must be measured with 0.01-foot precision according to the schedule specified on Form No. 633.

(h) Groundwater-level recovery in the production and monitored observation well(s) must be measured with 0.01-foot precision according to the schedule specified on Form No. 633 or at a minimum, according to the specified schedule on Form No. 633 for the first 24 hours of recovery and four times per day until end of the recovery test.

(5) A report describing the testing and monitoring procedures and presenting analyses, interpretations, and conclusions must be submitted with the application. The following reporting requirements are preferred:

(a) a topographic map with labeled locations of production and observation wells, discharge point, surface water monitoring sites, and a scale bar and north arrow;

(b) if available, a geologic map, stratigraphic, geomorphic, or lithologic descriptions, and drilling logs;

- (c) distances between the pumping well and the observation well, and depths, dimensions, and perforated intervals of each well as specified on Form No. 633;
- (d) surveyed wellhead elevations and staff gage elevations if basin closure testing is required;
- (e) a narrative description or conceptual model that describes the aquifer system;
- (f) a description of testing methods;
- (g) groundwater level and surface water monitoring data;
- (h) aquifer-testing data, transmissivity and storage coefficient determinations and effects to groundwater and surface water availability;
- (i) analyses, interpretations, and conclusions; and
- (j) all pumping schedules and drawdown and recovery data must be submitted in electronic format. (History: 85-2-113, MCA; IMP, 85-2-302, 85-2-311, 85-2-330, 85-2-337, 85-2-341, 85-2-343, 85-2-402, 85-2-419, 85-2-506, 85-2-508, MCA; NEW, 2004 MAR p. 3036, Eff. 1/1/05.)

36.12.122 CONTACTS (1) If communication about a water right application filing or objection filing is to be conducted through an individual other than the applicant, the name address, and phone numbers must be supplied.

(2) If a contact person is identified as legal counsel, all communication will be sent only to the attorney unless the attorney provides written instruction to the contrary.

(3) If a contact person is identified as a consultant, employee, or lessee, the individual filing the water right form or objection form will receive all correspondence and a copy will be sent to the contact person.

(4) A contact cannot represent an applicant at a hearing unless the contact is an attorney. (History: 85-2-113, MCA; IMP, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA; NEW, 2004 MAR p. 3036, Eff. 1/1/05.)